ITA 37/2004
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE SMT. JUSTICE A. HAZARIKA
JUDGMENT AND ORDER

(CAV)

By D. Biswas, J.

This appeal by the Revenue is directed against the judgment dated 20.6.2003 passed by the learned Income Tax Appellate Tribunal, Guwahati Bench, Guwahati in I.T.A. No.173(Gau) of 1998. The appeal was admitted for hearing on the following questions of law :-

1. Whether on the facts and circumstances of the case the assessment order under Section 144 of the Income-tax Act was barred by limitation ?

2. Whether on the facts and circumstances of the case the approval of the Range DCIT taken by the Assessing Officer vitiated the assessment proceeding and consequent thereof the assessment order issued by the Assessing Officer ?

2. We have heard Mr. U. Bhuyan, learned counsel for the appellant and also Dr. Saraf, learned senior counsel for the respondent-assessee.

3. The dispute relates to the assessment year 1993-1994. The Assessing Officer made assessment under Section 144 of the Income Tax Act computing total income at Rs.19,48,296/- and initiated proceedings under Section 171(10(b). The Income Tax payable on the amount assessed has been determined at Rs.18,09,198/-. This order dated 25.2.1997 was passed with the previous approval of the Range Deputy Commissioner of Income Tax.

4. On appeal, the Commissioner of Income Tax (Appeal) by the order dated 22.10.1997 declared the assessment as void. Being aggrieved thereby, the Revenue preferred ITA No.173(Gau)/1998 before the learned Tribunal. By the order dated 20.6.2003, the learned Tribunal dismissed the appeal affirming the decision of the CIT (Appeal). The learned Tribunal, on the question of limitation, held that the order of assessment dated 25.2.1997 is barred by limitation.

5. Question No.1 relates to the objection on the ground of limitation. Under Section 144, on the happening of any of the contingencies enumerated in sub-section (1), the Assessing Officer is empowered to make assessment of the total income or loss to the best of his judgment in order to determine the sum payable by the assessee on the basis of such assessment after taking into account all relevant materials gathered by him and after giving the assessee an opportunity of being heard. The contention of the assessee before the CIT (Appeal) as well as the learned Tribunal was that no order of assessment could be passed under Section 144 at any time after expiry of two years from the end of the assessment year in which the income was first assessable for the Assessment Year 1993-94. Their case before the authorities below was that the assessment year 1993-94 ends on 31.3.1994 and the period of limitation of two years as provided in Section 153(i)(a) stood extended upto 31.3.1996. The assessment order passed on 25.2.1997 was, therefore, barred by the limitation imposed under the Act.

6. Section 153(1)(a) provides that no assessment could be made under Section 144 after expiry of two years from the end of assessment year in which the income was first assessable. Sub-section (3) provides that the provisions of this sub-section shall not apply to assessment, re-assessment or re-computation in consequence of or to give effect to any finding or direction contained in a

n order passed under Section 250, 254, 260, 262, 263 or 264 or in an order of an y court in a proceeding otherwise than by way of appeal or reference under this Act. Clause(ii) of Explanation-1 to sub-section (3) provides that the period dur ing which the assessment proceeding is stayed by an order or injunction of any c ourt shall be excluded. Proviso to Clause (vii) of sub-section (3) of Section 15 3 provides that after computation as above, if the period of limitation availabl e to the Assessing Officer for making an order of assessment, re-assessment or r e-computation, as the case may be, is less than 60 days, such remaining period s hall be extended to 60 days and the period of limitation shall be deemed to be e xtended accordingly. This is the provision of law relating to limitation for ass essment, re-assessment or re-computation applicable in the case at hand.

7. As stated above, the assessment year 1993-94 ended on 31.3.1994. Further period of two years was available to the Assessing Officer under Sectio n 153(1)(a) which means that the assessment could be made on or before 31.3.1996 . Admittedly, the assessment was completed on 25.2.1997 i.e. after expiry of the period of limitation as provided in Section 153(1)(a).

8. Mr. U Bhuyan, learned counsel for the Revenue contended that the assessment proceeding was stayed by an order passed by this Court (High Court o f Guwahati in Civil Rule No.653/1996). The stay was imposed on 14.2.1996 and it continued till 14/15.10.1996, the date on which the Commissioner passed an order on a transfer application filed by the assessee under Section127. According to Mr. Bhuyan, learned Standing Counsel, the period between 14.2.1996 to 15.10.199 6 is to be excluded in computing the period of limitation. If it is so done, the assessment order passed by the assessee would be well within the period of limi tation as provided under the Act.

9. Dr. AK Saraf, learned senior counsel for the respondent -assesse e argued that no order of stay was as such passed by the High Court. The said Ci vil Rule under Article 226 of the Constitution was filed by the assessee seekin g appropriate direction for transfer of the proceeding from the file of Shri Dib endu Kumar Deb, Income Tax Officer, Ward Karimganj to any other officer. The ass essee preferred an application under Section 127 of the Income-Tax Act seeking t ransfer of the case. The application was not disposed of by the Commissioner. Th e assessee then sought a direction from this Court in exercise of writ jurisdict ion. This Court by the order dated 14.2.1996 disposed of the said Civil Rule wit h the direction that the proceedings initiated against the assessee shall contin ue, but the final order shall not be passed until the application under Section 127 is disposed of by the Commissioner.

10. It would appear from the order dated 14.2.1996 passed in Civil R ule No.653 of 1996 that there was no order of stay of the proceeding under the I ncome-tax Act. The Court directed that the proceedings shall continue but final order thereon shall not be passed until the matter is disposed of by the Commiss ioner. Therefore, the argument that the proceedings could not be completed withi n the period of limitation because of an order of stay passed by this Court does not hold good. In-fact, there was no order of stay from this Court. Though the order was passed in the said Civil Rule on 14.12.1996, the Commissioner sat over the matter and disposed of the same on 15.10.1996. What ever may be the reason for delay in disposing of the application under Section 127, the period of limit ation cannot be extended for apparent default on the part of the Commissioner. T his Court has also no power to extend the period of limitation as provided in th e Act in exercise of writ jurisdiction. The period cannot also be extended with the aid of Section 5 of the Limitation Act as-well. That apart, the provisions o f sub-section (2A) of Section 153 are meant for cases specified therein, and it has also no application in the case at hand. Having regard to the provisions of law and the facts and circumstances of the case as discussed, the question No.1 is answered against the Revenue and in favour of the assessee.

11. The assessment order was passed with the previous approval of the Range Deputy Commissioner of Income Tax. This was done in view of the order passed by the Commissioner while disposing of the application under Section 127 that at the assessment order shall be prepared under supervision of the Range Deputy Commissioner of Income Tax. Mr. Bhuyan, learned counsel for the Revenue submitted that the Assessing Officer had acted in disposing of the proceeding merely under the supervision and guidance of the Range Deputy Commissioner of Income Tax and there is nothing on record to show that he has been influenced in his decision making by the Range Deputy Commissioner of Income Tax. Dr. Saraf, countering this contention, submitted that the powers of the Assessing Officer are quasi-judicial and it cannot be subjected to any supervision, direction or approval of any higher authority. In support of this view, he has also relied upon a decision of the Hon'ble Supreme Court in Orient Paper Mills Ltd. -Vs.- Union of India, reported in AIR 1969 SC 48. The ratio available from this judgment is that the quasi-judicial power of an authority cannot be controlled by the direction issued by any authority however high it may be. There cannot be any controversy with regard to this proposition of law. However, the factual matrix made available before this Court is not adequate enough to come to the conclusion that the approval accorded by the Range Deputy Commissioner of Income Tax was preceded by any sort of direction or control ingrained with deep-seated influence in the decision making process. For this reason, it would not be possible to answer this question with authority. Moreover, the question also looses its significance in view of the decision in respect of Question No.1. We, therefore, decline to answer this question.

12. In the result, the appeal is dismissed.